No. 86 1985

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

RICHARD B. FREED, ET UX.,

Appellants,

v.

WORCESTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.,

Appellees.

APPEAL FROM THE
COURT OF APPEALS OF MARYLAND

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Are the Appellants, who were the targets of unfounded charges of child neglect and who were exonerated by the social services agency, denied certain Fourteenth Amendment rights by the State statutes and regulations prohibiting the disclosure of the identity of the individual making the unfounded complaint?

2. Are the State statutes and regulations relating to the confidentiaity of child neglect reports unconstitutional under the Fourteenth Amendment, insofar as the prohibited disclosure of the informant's identity denies to individuals exonerated of any neglect the right to a remedy, the right to access to the courts, the rights to due process and equal protection of the laws?

3. Are the State statutes and regulations, prohibiting the disclosure of the reporter of child neglect when such neglect is ruled out by the social services agency, void for vagueness or otherwise unconstitutional under Fourteenth Amendment due process protections, insofar as they fail to provide a procedure for obtaining the identity of the person making the unfounded complaint?

4. Did the Appellants state a cause of action in their Complaint under the Civil Rights Act of 1871, 42 U.S.C. Sec.1983, seeking an injunction ordering the disclosure of the identity of the informant and seeking damages?

5. Did the Appellants state a cause of action for writ of mandamus ordering the disclosure of the identity of the informant?

6. Whether the court below properly affirmed the trial court's dismissal of the Appellants' Complaint for failure to state a cause of action?

LIST OF ALL PARTIES TO THE PROCEEDING

Appellants: Richard B. Freed

and Paula Freed

Appellees: Worcester County Department of Social Services

State of Maryland

Baine Yates, Director of the Worcester County Department of Social Services

Tom Weimer, Assistant Director of the Worcester County Department of Social Services

Nancy Lynch, Social Worker for the Worcester County Department of Social Services

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APPEAL FROM THE
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JURISDICTIONAL STATEMENT

OPINION BELOW

The only lower court rendering an opinion was that of the Court of Special Appeals of Maryland: Richard B. Freed, et ux. v. Worcester County Department of Social Services, et al., _____ Md.App. _____ (1986). See Appendix 2a.

JURISDICTION

This appeal is from the decisions and judgment of the Court of Special Appeals of Maryland, which became final upon the entry of the Order of the Court of Appeals of Maryland on March 23, 1987, denying Appellants' Petition For Writ of Certiorari. See Appendix 1a.

Notice of Appeal to the Supreme Court of the United States was filed May

7, 1987 with the Court of Appeals of Maryland. See Appendix 24a.

Jurisdiction is founded on 28 U.S.C. sec. 1257(2) in that this appeal lies from a final decision of the highest Court of Maryland in which a decision could be had. Also, the appeal raises the question of the validity of state statutes and regulations on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of their validity.

In the event that jurisdiction under 28 U.S.C. sec. 1257(2) is found lacking, Appellants request that their papers be acted upon as a Petition For A Writ of Certiorari To The Court of Appeals Of Maryland, under 28 U.S.C. sec. 1257(3), and under 28 U.S.C. sec. 2103. Hanson v. Denckla, 357 U.S. 235 (1958).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

A. Constitutional Provisions:

Constitution of The United States, Fourteenth Amendment, set forth at Appendix 27a.

B. Federal Statutes:

Civil Rights Act of 1871, 42 U.S.C. sec. 1983, set forth at Appendix 27a.

C. State Statutes

Annotated Code of Maryland (1985 Repl. Vol.), Article 88A sec.6. See Appendix 28a.

Annotated Code of Maryland, Family Law Article (1984, 1985 Suppl.), sec. 5-701, sec. 5-702, sec. 5-704, sec. 5-705, sec. 5-706, sec. 5-707, sec. 5-708. See Appendix 30a.

D. State Regulations

Code of Maryland Agency Regulations (COMAR), 07.02.07.06, set forth at Appendix 35a.

STATEMENT OF THE CASE

The State of Maryland has enacted several statutes designed to identify neglected children; to provide judicial remedies including investigation of the family members and immediate removal of the child from the household; to provide immunity to persons who in good faith make a report of neglect to the local social services agency. Ann. Code of Md. Family Law Article (1984, 1985 Suppl.), sections 5-701 through 5-708. See Appendix 30a-35a.

The facts, as recited in the Appellants' Complaint (Appendix 37a) may be summarized as follows, and with immaterial variation were the same for both Counts:

The Appellants, husband and wife, reside in Ocean City, Maryland with their 5 children. That on or about August 13, 1985, the Worcester County Department of Social Services received a report of suspected child neglect. An as yet unnamed informant telephoned a complaint in the nature of a "child left unattended" on August 7, 1985. On that date, Paul Freed (age5) and Michael Freed (Age 3) were left with stepbrother Brian (Age10) for 3 hours in the family home while their grandfather who generally took care of them during the day in the summertime went for a medical check-up.

The Worcester County Department of Social Services is an agency of the State of Maryland, and the individual Appellees are employees of the State of Maryland

and the Worcester County Department of Social Services.

The complaint was received by Appellee Tom Weimer, Assistant Director of the agency who shortly thereafter dispatched Appellee Nancy Lynch to Appellants' home where she confronted Appellant Paula Freed and informed her that she had been charged with child neglect by a confidential informant. Lynch demanded to view the three children involved and to interview them. Appellant Freed refused entry to the home and the family became the subject of a formal agency investigation and were subjected to numereous investigative inquiries by the agency staff.

The Appellee retained an attorney to represent them before the Agency, to investigate the circumstances and nature

of the complaint, to advise them of the legal procedures involved, and to advise them as to whether or not they had to subject their minor children to "interviews" with social services personnel as demanded.

The Appellee social services agency eventually closed out its investigation by ruling out the existence of any neglect.

However, the damage to the Appellants' tranquil family environment had already been done. The children and in fact the whole family unit suffered turmoil, embarrassment and humiliation, being the subjects of a formal investigation of child neglect. The complaint to the governmental agency in fact set in motion a whole panoply of judicial and quasi-judicial procedures, and the Appel-

lants concluded that the complaint was made in bad faith, without any justification, and done solely for the purpose of harassment, and to smear their good reputation in the community.

The Appellants further concluded that because the Agency eventually ruled out any neglect, that the action of the as yet unnamed informant in filing a spurious and groundless complaint constituted an abuse of process, malicious prosecution, invasion of privacy, and slander, among other things. They thereupon demanded disclosure of the identity of the informant on the theory that the civil immunity for making reports of child neglect is available only to an informant who acts in good faith. Ann. Code of Md., Family Law Article, sec. 5-708. The three individual Appellees

Lynch, Weimer, and Yates acting individually and as employees of the Worcester County Department of Social Services refused to honor the Appellants request.

The Appellants, believing that the applicable state statutes prohibiting disclosure are unconstitutional as to them, because having been put through the trauma of an investigation initiated in bad faith and then cleared, such statutes in effect eliminate any right of redress they may have against the bad faith informant.

The Appellants thereupon filed a Complaint in the Circuit Court for Worcester County for the purpose of, among other things, obtaining a disclosure of the identity of the individual making the report, and challenging the constitutionality of the statutes and

regulations. Appendix 37a. In their Complaint for Mandamus to order the Appellees to disclose the identity of the informant, Appellants alleged either that the statutes entitled them to disclosure since they were falsely accused, or if not entitled to disclosure, then the statutes were unconstitutional. The Complaint also sought a similar order and damages under the Civil Rights Act of 1871 (42 U.S.C. sec. 1983) claiming that Ann Code of Md., Family Law Article, 5-707, and COMAR 07.02.07.06 were unconstitutional on their face or as applied to the Appellants. They also alleged that the statutes failed to provide any procedure whereby the victims of unfounded complaints of child neglect may obtain the identity of the informant. Appellees filed a Motion To Dismiss for failure to

state a claim upon which relief could be granted, and, after briefing of the constitutional issues by both sides, the trial court without opinion entered a judgment dismissing the case. Appendix 22a.

The Appellants then entered an appeal to the Court of Special Appeals of Maryland in which they argued:

> (a) That a suit for mandamus is appropriate to determine if a statute is unconstitutional, and that the applicable state statutes and regulations are unconstitutional on their face or as applied to the Appellants since they deny Appellants certain due process and equal protection rights, including the right to a remedy, and the right of access to the court; also, that the failure of the agency to adopt statutorily mandated regulations was improper in a constitutional sense.
>
> (b) That under their civil rights action, based on 42 U.S.C. sec. 1983, the Appel-

> lees reliance on the applicable statutes infringes and impairs the Appellants Fourteenth Amendment rights to access to the courts, the Fourteenth Amendment right to a remedy to redress a wrong, and denied to the Appellants certain due process and equal protection rights under the Fourteenth Amendment.

The Court of Special Appeals of Maryland affirmed the trial court's decision, upholding the validity of the applicable statutes against constitutional attack under the Fourteenth Amendment. Appendix 2a.

Following that decision, the Appellants filed a Petition For Writ of Certiorari to the Court of Appeals of Maryland, again raising the issue of the constitutional invalidity of the subject statutes on their face or as applied to the Appellants, and also for the failure of the Appellee agency to adopt legisla-

tively mandated rules governing the release of the information sought. The Petition was denied, which left standing the pronouncements of the lower appellate court.

FEDERAL QUESTIONS ARE SUBSTANTIAL

The issue presented by this appeal is whether or not parents, who have been subjected to state investigatory action and intrusion by the state into their family life for the purpose of investigating a report of child neglect, have the right to disclosure of the private individual initiating the state action where, following investigation, the state agency rules out any neglect of a child and thereby exonerates the targets of the investigation. Put another way, are certain state statutes and regulations unconstitutional in that they provide for

unwarranted quasi-judicial action by the state upon complaint by an informant, without affording the right, by disclosure of the identity of the informant, to redress the wrongs occasioned by baseless and unfounded complaints to the state agency?

The issues presented by this appeal are timely and of great public significance. Some of the resulting effects of unfounded allegations of neglect are presented in Besharov, D. J., "Unfounded Allegations - a New Child Abuse Problem", The Public Interest, No. 83, Spring 1986, pp. 18-33. The report points out that nationwide, about 65% of all reports are dismissed as unfounded. In addition, the report notes that each year, over 500,000 families are put through investigations of unfounded reports which is a massive

and unjustified violation of parental rights:

> "More troubling, the determination that a report is unfounded can only be made after an unavoidably traumatic investigation that is, inherently, a breach of parental and family privacy. To determine whether a particular child is in danger, case workers must inquire into the most intimate personal and family matters. Often it is necessary to question friends, relatives, and neighbors, as well as school teachers, day care personnel, doctors, clergymen, and others who know the family."

The Appellants request that the Court hear this appeal and declare the following statutes and regulations unconstitutional for the reasons stated herein:

(1) Md. Ann. Code, (1985 Repl. Vol.) Art. 88A, sec. 6b

(2) Md. Ann. Code, (1985 Repl. Vol.) Art. 88A, sec. 6d

(3) Code of Maryland Agency Regulations, COMAR .07.02.07.06E

(4) Md. Ann. Code, Family Law Article (1984), sec. 5-702(2); 5-707; 5-708

The Appellants believe that an as yet unidentified individual filed a baseless unfounded complaint with the local social services agency represented by the Appellees herein. The Appellants, parents of minor child, were then subjected to various types of state action, investigation, and invasion of privacy as provided for in Maryland Annotated Code, Family Law Article (1984) sec. 5-705. The state statutes provide for various sorts of judicial remedies which can culminate in the court ordered removal of a neglected child from the household under Maryland Annotated Code, Family Law Article (1984) sec. 5-706. Following their exoneration by the agency which ruled out any neg-

lect, the Appellants set about to determine the identity of the informant for the purpose of initiating suit against the informant based upon a bad faith motivation in initiating the complaint of neglect with the Appellees herein. Only private individuals making reports of child neglect in good faith are granted immunity under the applicable statutes. Maryland Annotated Code, Family Law Article (1984), sec. 5-702(2) and sec. 5-708.

If the Appellants can prove as alleged in their Complaint that the report made to the Appellee social services agency was "made in bad faith, without any justification" and that the motive in making the report to the agency as to "attack, embarrass, or subject (the appellants) to unfair scrutiny", there

would ordinarily be a number of common law actions that would lie, such as, but not limited to:

(1) Abuse of Process (requires an ulterior motive, and a wilful act in the use of the process for an objective not legitimate). Wood v. Palmer Ford Inc. 47 Md. App. 692 (1981); appeal after remand, 298 Md. 484 (1984).

(2) Malicious Use of Process (requires same elements as malicious prosecution, except arising out of a civil proceeding, i.e. a civil proceeding instituted, termination of same in favor of Plainiff, absence of probable cause to institute, malice as a primary motive, and damages inflicted on the Plaintiff). Wood v.

Palmer Ford Inc., 47 Md. App. 692 (1981); appeal after remand 298 Md. (1984).

(3) Intentional Infliction of Emotional Distress (intentional conduct of an extreme or outrageous nature causing severe emotional distress). Harris v. Jones, 281 Md. 560 (1977).

(4) Defamation. Metromedia Inc. v. Hillman, 285 Md. 161 (1979).

(5) Invasion of Privacy. Household Finance v. Bridge, 252 Md. 531 (1968).

It is the Appellees' refusal to furnish the name of the informant that violated Appellants' constitutionally protected rights.

I. Access To The Courts

There is a constitutionally protected right to access to the courts. The right seems to arise out of the constitutional guarantee of due process, as a consequence of the constitutional principle of equal protection, and the First Amendment right to petition the government for redress of grievances. Marshall v. Jerrico Inc., 446 U.S. 238 (1980); Griffin v. Illinois, 351 U.S. 12 (1956), reh. den. 351 U.S. 958; Cruz v. Beto, 405 U.S. 319 (1972).

In Maryland Public Interest Resesarch Group v. Elkins, 430 F.Supp. 387 (Md. 1976), vacated 565 F. 2d 864, cert. den. 435 U.S. 1008, the right of access to the courts was said to be a freedom protected by the First and

Fourteenth Amendments against abridgment by federal and state government.

In the instant case, the Appellants' right to access to the Court has been denied because the failure of the Appellees to provide the name of the informant has impeded the investigatory process, making it impossible to sue such person for making the unfounded complaint.

Federal courts, in interpreting the application of 42 U.S.C. sec. 1983, have found that a cause of action is stated for negligent interference with the Plaintiffs' right to access to the Courts. In Navarette v. Enomoto, 536 F.2d 277 (9th Cir. 1976), the Court found that the Plaintiff stated a cause of action by his allegations that his removal as prison law librarian, and the termination of

a law student visitation program in which he participated, negligently deprived him of access to the courts. Particularly instructive is Ryland v. Shapiro, 708 F.2d 967 (5th Cir. 1983), where Plaintiffs, parents of the decedent, alleged that the defendant prosecutors concealed the fact that their daughter had been killed by another prosecutor and prevented a full investigation into the murder for 11 months. The court held that a cause of action was made under sec. 1983 for wrongful interference with their right of access to State Court to pursue a wrongful death action.

II. The Right To A Remedy To Redress A Wrong

Justice Matthews stated in Pritchard v. Norton, 106 U.S. 124 (1882).

> "Hence it is that a vested right of action is property in the same sense in which tangible things are property, and is equally protected against arbitrary interference."

and in Poindexter v. Greenhow, 114 U.S. 270 (1885):

> "To take away all remedy for the enforcement of a right is to take away the right itself. But that is nct within the power of the State."

The Appellees have denied to Appellants the right to redress wrongs caused by the informant who in bad faith caused

the commencement of investigational procedures for purposes of harassment.

III. Right To Procedural Due Process

The Appellants assert that the Appellees have failed to provide procedures for obtaining access to the identity of the informant as required by statute.

Md. Ann. Code,. Art. 88A sec. 6(b1) states that such information may be obtained by a court order or

> " . . . may be disclosed . . to the person who is suspected of child neglect if . . provisions are made for the protection of the identity of the reporter . . . whose life or safety is likely to be endangered by disclosing the information" (sec. 6b4).

In addition, Family Law Article sec. 5-707 requires the Social Services Administration to provide by rule or regulation "conditions under which the information may be released".

Finally, Md. Ann. Code, Art. 88A sec. 6d states:

> "The Social Services Administration shall issue regulations governing access to . . confidential information . ."

To Appellants' knowledge, there are no rules or regulations pertaining to how and in what manner, and under what circumstances a person who is the target of a child neglect investigation may gain access to the name of the informant who makes the unfounded complaint. In fact, there are no regulations at all. See COMAR 07.02.07.06E, which is simply a

restatement of the confidentiality requirement.

The failure of the Social Services Administration to provide by rules and regulations "conditions under which information may be released" as mandated by Family Law Article sec. 5-707(a), and the failure to disclose or allow for disclosure by "Court Order" or under other conditions as mandated by Maryland Annotated Code, Art. 88A sec. 6b, in effect denies to the Plaintiffs rights protected to them by the Maryland legislature, and constitutes a failure of due process.

IV. Right To Equal Protection

But for the actions of Appellees in refusing to provide the name of the informant, Appellants could have brought

several causes of action against such person, and they have therefore been discriminated against in their rights to pursue their lawful common law actions.

As stated in Family Law Article, sec. 5-702, the purpose of the statute "is to protect neglected children".

What is the State interest in the protection from disclosure the names of individuals who make reports in bad faith and for purposes of causing the harassment of the targets of investigation by subjecting them to investigatory process.

As stated by this Court in Pennsylvania v. Ritchie, 480 U. S.____ (1987), construing certain confidentiality portions of a Pennsylvania statute relating to child abuse:

> "Although we recognize that that the public interest in protecting this type of sensitive information is strong, we do not agree that this interest necessarily prevents disclosure in all circumstances".

V. Right To Privacy

When the informant complained to Appellees of "child left unattended", the Appellee social services agency failed to make any pre-investigation determination as to whether or not the complaint matched up with the statute on child neglect so as to warrant any investigation at all.

The statute, Maryland Annotated Code, Family Law Article, sec. 5-701g defines "neglected child" as

> "A minor child who has suffered or is suffering significant physical or mental harm or injury from (1) the absence of the child's parents . . . " (emphasis supplied)

Apparently, Appellees made no inquiry of the informant as to what harm or injury was involved.

Thus, the Appellees violated Appellants' right to privacy relating to family relationships as enunciated in Roe v. Wade, 410 U. S. 113 (1973) and Palko v. Connecticut, 302 U. S. 319 (1937).

Moreover, the state's interference with the constitutionally protected privacy right without adequate procedural safeguards calculated to avoid unnecessary investigations of spurious claims constitutes a lack of procedural due process. Ramos v. Gallo, (1984, D. C. Mass.), 596 F.Supp. 833.

CONCLUSION

The Appellants' complaint was brought both under a mandamus action and also under 42 U.S.C. sec. 1983 for violation of the above enumerated constitutional rights in which they contended

that the statutes and regulations as applied to them were unconstitutional. The importance of the appeal lies in the question of whether or not a State can subject parents to an active investigation which involves an intrusion into their home and interviews with minor children without releasing the name of the informant if the parents are cleared of any wrongdoing or neglect.

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APPENDIX

IN THE

COURT OF APPEALS

OF MARYLAND

Petition Docket No, 547

September Term, 1986

Richard B. Freed et al.,

Appellants

v.

Worcester County Department of

Social Services et al.,

Appellees

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing

that review by certiorari is desirable and in the public interest.

Date: March 23, 1987 Robert C. Murphy,
Chief Judge

IN THE

COURT OF SPECIAL APPEALS

OF MARYLAND

No. 370

September Term, 1986

Richard B. Freed, et ux.,

Appellants

v.

Worcester County Department of

Social Services, et al.,

Appellees

Filed December 8, 1986

Before Judges GILBERT, Chief Judge, BELL, and POLLITT,

GILBERT, Chief Judge

The nation in the early 1970's "discovered" child abuse and neglect. Discovery was not occasioned by the sudden appearance of those two social aberrations but rather because society was awakened to the enormity of the problem. We have come a long way from "the (ancient) Roman laws (that) gave the father a power of life and death over his children."[1] Sir William Blackstone, in his Commentaries On The Laws of England, states that "(t)he power of a parent by... English laws is much more moderate; but still sufficient to keep the child in order and obedience. (The parent) may lawfully correct his child, being under age, in a reasonable manner..."[2]

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[1] W. Blackstone, Commentaries On The Laws of England

[2] Id.

We infer from the words "reasonable manner" that what is not reasonable is unreasonable and hence unlawful.

According to the U.S. Department of Health and Human Services Publication No. (OHDS) 80-30271 entitled "National Analysis of Official Child Neglect and Abuse Reporting (1978)," Maryland reported 3,779 abuse cases in 1978. Neglect cases were not then considered a reportable condition. That same publication contains the statement:

> "The problem of child abuse and neglect has not long been on the agenda of social concerns. Within less than a generation it has moved from what was largely a private issue to become a public responsibility. By the middle of 1970, all fifty states, three United (S)tates territories and the District of Columbia (had) enacted legislation mandating the reporting of child maltreatment."

Maryland Senate Joint Resolution No. 16, passed in 1983 by the General Assembly, called upon the Governor to establish a "Task Force on Child Abuse and Neglect"

for the purpose of examining and reporting on "various problems associated with (the) issue." The Task Force, in its Preliminary Report of January 1984, said that the "failure to report cases of suspected child abuse and neglect is a major problem" in Maryland.[3] In its "Summary of Preliminary Recommendations for Legislative Action," the Task Force opined that "(m)ost cases of child abuse and neglect go unreported."[4]

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[3]Preliminary Report of the Governor's Task Force on Child Abuse and Neglect, p. 4 (January 1984).

[4]Id. at p. 5. Federal studies indicate that, although child neglect receives less public attention than child abuse, "(c)hild neglect is substantiated following child protective services investigations twice as frequently as all forms of child abuse combined (and) (c)hild fatalities and more severe injury and/or impairment are more frequently associated with neglect than with abuse." Office of Human Development Services, U.S. Department of Health and Human Services, Perspectives on Child Maltreatment in the Mid '80's 15 (1984).

Patently, to encourage the reporting of child neglect cases, the Legislature provided that health care practitioners and specified others were required to report cases of neglected children. Laws 1978, ch. 880 conferred immunity from civil action upon the reported of neglect.[5]

Subsequently in Laws 1983, ch. 492, the General Assembly recognized that persons required to report were but one source for the reporting of neglect to children and mandated that "(a)ny person other than a health practitioner, law enforcement agency, police officer, educator or social worker who has a reasonable belief that a child is a neglected child may file with the local department (of social services[6]) an oral or written report of the suspected neglect."[7]

---

[5]Maryland Code, Family Law Article Ann., §§ 5-702 (1)-(2), 5-704 (a), 5/708 (1984 and Supp. 1986).

[6] Family Law Art. § 5-701 (f).

[7] Family Law Art. § 5-704 (c).

To assure itself that reports of suspected child neglect wuld be forthcoming from those who were not required to report, the Legislature cloaked the informant with immunity by providing in Family Law Art. § 5-708:

> "Any person other than a person suspected of child neglect who in good faith makes or participates in making a report of neglect under § 5-704 of this subtitle or participates in an investigation or a resulting judicial proceeding is immune from any civil liability or criminal penalty that would other wise result."

"Neglected child" is defined in Family Law Art. § 5-701 (g) to main:

> "a minor child who has suffered or is suffering significant physical or mental harm or injury from:
>
> (1) the absence of the child's parents, guardian, or custodian; or
>
> (2) the failure of the child's parents, guardian, or custodian to give proper care and attention to the child and the child's problems under circumstances that indicate that the child's health or welfare is harmed or threatened thereby, unless the failure consists only of providing the child with nonmedical remedial care and treatment recognized by State law instead of medical treatment."

With that brief background firmly in mind, we turn to the matter sub judice.

The Worcester County Department of Social Services (Social Services) received a report in August 1985 of suspected child neglect involving children of Richard and Paula Freed. After an investigation, Social Services "ruled out" any child neglect.[8]

The Freeds took the position that the report of child neglect was made in bad faith and without any basis. They expressed their intent to file common law actions against the reporter, whomever that might be. To determine the identity of the informant, the Freeds endeavored to obtain from Social Services officials the name of the person who made the child neglect report, but all attempts were rebuffed.

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[8]COMMAR.07.02.07.09F(2)defines "ruled out" to mean "that there is no evidence that the child has been or is being harmed or that the level of the child's (con't)

The Freeds then filed a two count complaint in the Circuit Court for Worcester County. They named as defendants the State Social Services, and three employees of Social Services who were involved in the investigation of the child neglect report, but who steadfastly refused to identify the informant.[9] Among the remedies sought by the Freeds was a writ of mandamus to compel Social Services to disclose the name of the person who reported the child neglect. Additionally, the Freeds, in a 42 U.S.C. §1983 action, asked for money damages.

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[8]con't

> care is below minimally acceptable standards...Child neglect is ruled out when, after investigation, it is found that the parent, guardian, or custodian is present, and is giving proper care and attention to the child and his problems."

See Family Law Article , § 5-705(c) (1) (ii).

[9]The defendants are hereafter collectively referred to as Social Services.

The latter claim was grounded on an alleged violation of "constitutionally protected rights." They also requested that Social Services be required to reveal the source of the child neglect report and a permanent injunction be issued requiring Social Services "to disclose the name of a (reporter of suspected child neglect) where neglect is ruled out" by Social Services.[10]

All of the defendants, pursuant to Md. Rule 2-322(b) (2), filed a motion to dismiss the complaint on the ground that it failed to state a claim upon which relief could be granted. Judge Theodore R. Eschenburg dismissed the suit, and this appeal ensued.

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[10]We observe that be seeking injunctive relief the Freeds, if successful, would be intitled to an award of a counsel fee to their attorney even though they recovered no damages. Pulliam v. Allen, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984), aff'g sub nom. Allen v. Burke, 690 F. 2d 376 (con't)

A writ of mandamus is an "extraordinary remedy... based upon reasons of justice and public policy to preserve peace, order and good government." Ipes v. Board of Fire Commissioners of Baltimore, 224 Md. 180, 183, 167 A. 2d 337, 339 (1961).

> "The office of mandamus, as generally used, is to compel inferior tribunals, public officials or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which duty the party applying for the writ has a clear legal right."

Criminal Injuries Compensation Board v. Gould, 273 Md. 486, 514, 331 A.2d 55, 72 (1975). See State ex rel. Henderson v. Taylor, 59 Md. 338, 344 (1883). In this case there is neither "imperative" duty on the part of Social Services nor the "clear legal right" in the Freeds.

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10 con't
(4th Cir. 1982); Hutto v. Finney, 437 U.S. 678, 98 S. Ct. 2565, 57 L. Ed. 2d 522 (1978) aff'g 548 F. 2d 740 (8th Cir. 1977), aff'g 410 F. Supp. 251 (E.D. Ark. 1976).

The Legislature in Laws 1983, ch. 492 adjusted Maryland's child neglect statutes to conform with federal regulations.[11] There is nothing in those statutes that creates a duty on the part of the apellees to reveal the identity of the person who reported the unspected child neglect. On the contrary, Social Services' duty is to "safeguard" the requested information. See COMAR.07.01.02.01.

The Freeds point to Md. Ann. Code art. 88A, § 6(b), which provides in pertinent part:

> "Except as other wise provided in Title 5, Subtitle 9 of the Family Law Article, all records and reports concerning child abuse or neglect are confidential and their unauthorized disclosure is a criminal offense subject to the penalty set out in subsection (e) of this section. Information contained in reports or records concerning child abuse or neglect may be disclosed only: (1) Under a court order(.)"

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[11]Child abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4, now codified as 42 U.S.C. §§ 5101 - 5107 (1982). See 42 U.S.C. § 5103 (b); 45 C.F.R. § 1340.14 (i) (1) and (i) (2) (viii).

From that statute they deduce that the trial court, on the authority of §6(b), should have compelled Social Services to disclose the name of the person who reported the suspected neglect. Without that information, the Freed's maintain they are unable to demonstrate that the report made to Social Services was not founded on a "reasonable belief."

We think the Freeds misread and misinterpret §6(b) of article 88A. The power conferred upon a court to order disclosure is not broad grant of authority to emasculate the protective provisions of the statutes. Rather it is a recognition that when the information is relevant to some other purpose such as adoption, custody, guardianship, and visitation, the court may require the agency to disclose the protested matter. Of course, even then the court is empowered to seal the record and preclude further disclosure. The statute

was never intended to be a vehicle to permit the willy-nilly disclosure of the very records the Legislature sought to keep confidential. Indeed, the purpose behind the nondisclosure laws is to encourage the reporting of child neglect cases. To accomplish that objective, the Legislature conferred immunity upon the informant who acts on a reasonable belief. Were we to allow a court to order disclosure merely upon demand or upon the parent's or guardian's belief that the disclosure was made in bad faith, the nondisclosure statutes would be severely eroded, if not effectively eliminated.

The statutes foreclose the easiest manner of determining the identity of the person who reports suspected child neglect. Those persons who are aggreived at being unjustly reported are at liberty, however, to employ whatever lawful investigative processes are

available so as to ascertain the identity of the informer. Admittedly, their task is made difficult by the nondisclosure statutes, but then that is presumable what was intended by the Legislature.

Judge Eschenburg properly dismissed the complaint with respect to the action for mandamus.

II

In an action founded on 42 U.S.C. § 1983, the Freeds assert that they were deprived of the following constitutional rights: access to the courts, right to a remedy to redress a wrong, procedural due process, and equal protection.

Two elements are essential for recovery under § 1983: (1) conduct "under color of any Statute, ordinance, regulation, custom, or usage, of any State ...," and (2) "deprivation of any rights, privileges, or immunities

secured by the (United States) Constitution and laws." The parties do not contest the fact that the actions complained of in this case were under the color of state statutes and regulations.

Appellants argue that their "right of access to the (c)ourt has been denied...because the failure of the (Social Services) to provide the name of the (reporter) has made it impossible to sue such person for making the unfounded complaint." That argument falls short because it confuses difficulty with impossibility and frustration with failure.

Judge Alpert, writing for this Court in Boyds Civic Association v. Montgomery County Council, 67 Md. App. 131, 146, 506 A. 2d 675, 683 (1986), said that § 1983 provides a remedy when constitutional rights are actually encroached upon, not when a bare threat to infringement occurs. In the instant case,

Social Services' refusal to identify the informant may have stalled the Freeds' legal action against the person who reported the neglect, but action is not "impossible," just difficult.

Appellants correctly note that the immunity granted in Family Law Article, §5-708 applies only if the report is made in good faith.[12] We acknowledge, too, "(a)s is almost always the case, the question of "good faith" presents a triable issue of fact." Doe v. County of Suffolk 494 F. Supp. 179, 183 n. 4 (E.D.N.Y.1980).[13]

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[12]Statutes in Arkansas, Colorado, Florida, Illinois, Indiana, Maine, Michigan, Mississippi, Montana, New Mexico, New York, North Dakota, Pennsylvania, South Carolina, Tennessee, Wisconsin, and Wyoming have included an explicit presumption that reports of child neglect are made in "good faith." Similar provisions have been found in statutes of the District of COlumbia, American Samoa, and Guam. See Office of Human Development Services, U.S. Department of Health, Education, and Welfare, Child Abuse & Neglect, State Reporting Laws 10-11 (1979). Maryland's immunity provision in Family Law

(con't)

Nevertheless, no one has the right to obtain the name of the reporter from Social Services for the purposes of initiating litigation under 42 U.C.S. § 1983. However the Freeds proceed to identify and sue the informant is for them to decide. We merely hold that they may not obtain that identity through Social Services.

The Freeds aver that they have been denied equal protection of the law. To support that bald allegation, they query as to what the State's interest is in protecting the identity of persons who in bad faith report child neglect cases. The question put by the appellants demonstrates their misunderstanding of the Legislative

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12 con't
Article, §5-708 does ot sepcify such a presumption. Practically, however, good faith is initially presumed since the burden of proving bad faith must be met by the person asserting it.

13 Doe involved good faith immunity granted to persons participating in the making of reports of suspected child neglect under New York's (con't)

intent as well as their desire for revenge against the person or persons who reported them to Social Services. The Freeds overlook Justice Douglas' words in Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 489, 75 S. Ct. 461, 465, 99 L. Ed. 563 (1955), that "(t)he prohibition of the Equal Protection Clause goes no further than the invidious discrimination."

Irrespective of the Freeds' sense of outrage, they have not been denied equal protection of the laws; no invidious discrimination has been demonstrated by them. The State has a rational basis for protecting reporters

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13 con't
child protective services laws. See Krause, Child Abuse and Neglect Reporting Legislation in Missouri, 42 Mo. L. Rev. 207 (1977); Katz, Howe, and McGrath, Child Neglect Laws in America, 9 Fam. L.Q. 1 (1975); Sussman, Reporting Child Abuse: A Review of the Literature, 8 Fam. L.Q. 245 (1974)

of child neglect. The premise for the statute is to encourage reports of child neglect, concomitantly discourage incidents thereof, and simultaneously provide protection to those least able to protect themselves. A statutory classification survives a constitutional challenge if the statute is grounded on a rational basis. Hornbeck v. Somerset County Board of Education, 295 Md. 597, 642, 458 A. 2d 758, 782 (1983); Attorney General of Maryland v. Waldron, 289 Md. 683, 707, 426 A.2d 929, 942 (1981).

Under the Hornbeck and Waldron tests, Family Law Article §§ 5-704 (c) and 5-708 and Md. Ann. Code art. 88A, § (6) (b) pass constitutional muster.

Moreover, the Freeds, if and when they

learn the identity of the person who reported the suspected child neglect, may resort to the court for redress.

JUDGEMENT AFFIRMED

COSTS TO BE PAID BY APPELLANTS

IN THE

CIRCUIT COURT

FOR WORCESTER COUNTY, MARYLAND

Case No. 85 CV 0965

Docket No. SP-25/181

Richard B. Freed et al.,

Plaintiffs

v.

Worcester County Department of

Social Services, et al.

FILED MARCH 5, 1986

ORDER

Having considered defendants' Motion to Dismiss for Failure to State a Claim, it is hereby

ORDERED this 5th day of March, 1986, that the Motion BE, and the same hereby IS, GRANTED, and that the Complaint BE, and the

same hereby IS, DISMISSED, and that judgement is entered in favor of the Defendants.

Theodore R. Eschenburg, Judge

IN THE

COURT OF APPEALS

OF MARYLAND

Petition Docket No, 547

September Term, 1986

Richard B. Freed, et ux.,

Appellants

v.

Worcester County Department of

Social Services et al.,

Appellees

NOTICE OF APPEAL TO THE
SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Richard B. Freed and Paula Freed, appellants, hereby appeal to the Supreme Court of the United States from the decisions and judgment of the Court of Special Appeals of Maryland,

which became final upon the entry of the Order of the Court of Appeals of Maryland, entered March 23, 1987, denying Appellants Petition for Writ of Certiorari.

This appeal is taken pursuant to 28 U.S.C. sec. 1257(2) and 28 U.S.C. sec. 2101.

WALTER P. DRAKE
3507 Coastal Highway
Ocean City, MD 21842

PETER A. WIMBROW, III
4100 Coastal Highway
Ocean City, MD 21842

CERTIFICATE OF SERVICE

CERTIFIED that a copy of the foregoing was mailed, postage prepaid, this 7th day of May, 1987, to:

Warne C. Littleton, Clerk
Circuit Court for Worcester County
Court House
Snow Hill, Maryland 21863
(Clerk of Court possessed of Record)

J. Joseph Curran, Jr., Esquire
Attorney General of Maryland

Mark J. Davis, Esquire
Assistant Attorney General
1100 North Eutaw Street
Room 606
Baltimore, Maryland 21201

PETER A. WIMBROW, III

All parties required to be served have been served

Dated: May 7, 1987

PETER A. WIMBROW, III
4100 Coastal Highway
Ocean City, MD 21842

301 289-6667

APPLICABLE CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

A. Constitutional Provisions:

Constitution of the United States

[Amendment XIV]

Section 1.

[Citizenship Rights Not To Be Abridged By States]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B. Federal Statutes:

Civil Rights Act of 1871, 42 U.S.C. section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

C. STATE STATUTES:

Ann. Code Md. (1985 Repl. Vol.), Article 88A Sec. 6

§ 6. Misuse of public assistance lists and records.

(a) *In general.* — Except in accordance with a court order or to an authorized officer or employee of the State, or the United States, or a fiduciary institution having a right thereto in an official capacity, and as necessary to discharge responsibilities to administer public assistance, medical assistance, or social services programs, it shall be unlawful for any person or persons to divulge or make known in any manner any information concerning any applicant for or recipient of social services, child welfare services, cash assistance, food stamps, or medical assistance, directly or indirectly derived from the records, papers, files, investigations or communications of the State, county or city, or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

(b) *Child abuse or neglect.* — Except as otherwise provided in Title 5, Subtitle 9 of the Family Law Article, all records and reports concerning child abuse or neglect are confidential, and their unauthorized disclosure is a criminal offense subject to the penalty set out in subsection (e) of this section. Information contained in reports or records concerning child abuse or neglect may be dsiclosed only:

(1) Under a court order;

(2) To personnel of local or State departments of social services, law enforcement personnel, and members of multidisciplinary case consultation teams who are investigating a report of known or suspected child abuse or neglect or who are providing services to a child or family that is the subject of the report.

(3) To local or State officials responsible for the administration of the child protective service as necessary to carry out their official functions; or

(4) To a person who is the alleged child abuser or the person who is suspected of child neglect if that person is responsible for the child's welfare and provisions are made for the protection of the identity of the reporter or any other person whose life or safety is likely to be endangered by disclosing the information.

(c) *Statistics; financial records.* — Nothing in this section shall be construed to prohibit:

(1) The publication, for administrative or research purposes, of statistics or other data so classified as to prevent the identification of particular persons or cases;

(2) The Department of Human Resources from obtaining an individual's financial records from a fiduciary institution in the course of verifying the individual's eligibility for public assistance; or

(3) Disclosures as permitted by § 1-303 of the Financial Institutions Article of the Code.

(d) *Regulations.* — The Social Services Administration shall issue regulations governing access to the use of confidential information which is in the possession of the Administration or local departments of social services.

(e) *Penalty.* — Any offense against the provisions of this section shall be a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars ($500) or imprisonment for not exceeding ninety days, or both, in the discretion of the court.

Ann. Code Md., Family Law Article (1984, 1985 Suppl.)
Title 5. Subtitle 7, Neglected Children

§ 5-701. Definitions.

(a) *In general.* — In this subtitle the following words have the meanings indicated.

* * * * * *

(g) *Neglected child.* — "Neglected child" means a minor child who has suffered significant physical or mental harm or injury from:

(1) the absence of the child's parents, guardian, or custodian; or

(2) the failure of the child's parents, guardian, or custodian to give proper care and attention to the child's problems under circumstances that indicate that the child's health or welfare is harmed or threatened thereby, unless the failure consists only of providing the child with nonmedical remedial care and treatment recognized by State law instead of medical treatment.

§ 5-702. Legislative policy.

The purpose of this subtitle is to protect neglected children by:

(1) mandating that each health practitioner, educator or social worker, law enforcement agency, and police officer report any suspected neglect;

(2) giving immunity to any individual who reports, in good faith, suspected incidents of neglect;

(3) requiring a timely investigation of each reported suspected incident of neglect; and

(4) requiring each local department to give the appropriate service in the best interests of the neglected child.

§ 5-704. Notification of authorities; making report.

(a) *Persons required to notify authorities and report suspected instances of neglect.* — Notwithstanding any law on privileged communications, each health practitioner, law enforcement agency, police officer, educator or social worker who contacts, examines, attends, or treats a neglected child, or who has reason to believe that the child is a neglected child shall:

(1) notify the local department; and

(2) if acting as a staff member of a hospital, public health agency, child care institution, juvenile detention center, school, or similar institution, notify immediately the head of the institution or the designee of the head.

(b) *Oral and written reports.* — A person who notifies the local department under subsection (a) of this section shall make:

(1) an oral or written report to the local department as soon as possible; and

(2) a written report to the local department not later than 48 hours after the contact, examination, treatment, or other circumstances that caused the individual to believe that the child is a neglected child.

(c) *Persons who may file reports of suspected instances of neglect.* — Any person other than a health practitioner, law enforcement agency, police officer, educator or social worker who has a reasonable belief that a child is a neglected child may file with the local department an oral or written report of the suspected neglect.

(d) *Contents of report.* — Insofar as is reasonably possible, a person who makes a report under this section shall include in the report the following information:

(1) the name, age, and home address or last known address of the child;

(2) the name and home address or last known address of the child's parent or other person who is responsible for the child's care;

(3) the whereabouts of the child;

(4) the name and age of every child in the household;

(5) the reason why the individual believes that the child is a neglected child, including a statement of the facts and circumstances that gave rise to this belief; and

(6) any other information that would help the local department to determine:

(i) the cause and extent of the suspected neglect; and

(ii) the identity of any individual responsible for the neglect.

§ 5-705. Investigation.

(a) *Initiation.* — Promptly after receiving a report of a suspected neglected child, the local department shall make a thorough investigation to protect the health, safety, and welfare of the child or children.

(b) *Finding of neglect.* — If there is a finding of neglect, the local department shall determine:

(1) the nature, extent, and cause of the neglect;

(2) the identity of the individual who is responsible for the neglect;

(3) the name, age, and condition of every other child in the household; and

(4) any other pertinent information.

(c) *Written report of findings.* — Within 10 business days after the completion of an investigation under this

subtitle, the local department shall make a written report of its findings. The report shall:

(1) state whether neglect is:

(i) confirmed;

(ii) ruled out; or

(iii) uncertain; and

(2) if there is a finding of neglect, including a treatment plan.

§ 5-706. Judicial remedies; services by local department.

(a) *Court order to enter household and remove neglected child.* — If a representative of any local department is conducting an investigation under this subtitle and has probable cause to believe that a child is in a serious physical danger or that an emergency exists, the local department shall seek a court order that permits a representative of the local department:

(1) to enter the household to determine the condition of the child; and

(2) to remove the child, if conditions warrant.

(b) *Entry of household; removal of child.* — (1) A police officer shall accompany the representative in carrying out the order and may use reasonable force to enable the representative to gain entry.

(2) the representative and the police officer may remove the child if they agree that:

(i) the child is in serious physical danger; or

(ii) an emergency exists.

(c) *Review of removal of child; report of findings.* — (1) If the representative and the police officer remove the child, the court shall conduct a review of the action taken

on the next court day, unless the court postpones the review for good cause shown.

(2) If the representative and the police officer do not remove the child, the representative and the police officer shall report their findings to the court and, if the court orders the removal of the child, the child shall be removed.

(d) *Local department to provide services.* — (1) Based on the findings and treatment plan of the local department, the local department shall assure that services are provided that are in the best interests of the child.

(2) The local department may petition the court on behalf of the child for appropriate relief.

§ 5-707. Reports and records.

(a) *Confidentiality.* — The Social Services Administration of the Department, subject to federal and State law, shall provide, by rule or regulation:

(1) procedures for protecting the confidentiality of reports and records made in accordance with this subtitle; and

(2) conditions under which information may be released.

(b) *Expungement of records.* — (1) If the report required by § 5-705(c) of this subtitle states that there is no neglect, the local department promptly shall expunge all records in the local department that relate to that report.

(2) If the report required by § 5-705(c) of this subtitle states that neglect is neither confirmed nor ruled out, the local department within 1 year from the date of the local department's report on its findings, shall expunge all records in the local department that relate to that report.

§ 5-708. Immunity of person making record.

Any person other than a person suspected of child neglect who in good faith makes or participates in making a report of neglect under § 5-704 of this subtitle or participates in an investigation or a resulting judicial proceeding is immune from any civil liability or criminal penalty that would otherwise result.

D. State Regulations:

Code of Maryland Agency Regulations (COMAR) 07.02.07.06

.06 Receiving Reports of Suspected Child Abuse or Neglect.

A. The local department of social services shall receive reports of suspected abuse from any source. When the local department receives a report, the local department shall notify the local law enforcement agency immediately. The two agencies may enter into a joint agreement for this notification requirement.

B. The local department of social services shall receive reports of suspected child neglect from any source.

C. Every local department of social services shall establish a process through which any report of suspected child abuse or neglect from any source is promptly directed to child protective services within the local department.

D. The local department of social services shall acknowledge receipt of the report, and indicate that investigation is being made, to every source of a report of suspected child abuse or neglect. The detail shared shall depend on the source of the report and the involvement of the source in the case.

E. The local department of social services shall encourage professional sources of reports to share information about the referral with the reported family, but the department may not identify any reporting source to a reported family, unless:

(1) The reporting source is not a lay person but is a source of referral that is required by law to report suspected abuse or neglect, and this reporting source has clearly given oral or written permission to the local department to reveal its identity;

(2) A court of law has ordered the local department to reveal the identity to the reported family; or

(3) The department is otherwise required by law to reveal the identity of the reporting source.

F. Every local department shall have staff "on call" 24 hours a day, 7 days a week, to take appropriate action on reports of suspected child abuse and child neglect. The local department shall assure that the public has a means of access to the staff "on call" after office hours.

IN THE

CIRCUIT COURT

FOR

WORCESTER COUNTY, MARYLAND

CASE NO. 85 CV 0965

COMPLAINT

Count I

(Mandamus)

Richard B. Freed, and Paula Freed, his wife, sue the Worcester County Department of Social Services, State of Maryland, Baine Yates, Tom Weimer, and Nancy Lynch, Defendants and say:

1. That the Plaintiffs are husband and wife, and they reside in Mallard Island of Ocean City, Maryland with 5 children, namely James Gray (age 18), Elizabeth Gray (age 13), Brian Gray (age 10), Paul Freed (age 5) and Michael Freed (age 3).

2. That the 3 older children, James, Elizabeth and Brian are the children of Plaintiff Paula Freed and James Gray by a former marriage.

3. That on or about August 9, 1985, a complaint of child neglect was made with the Worcester County Department of Social Services,

an agency of the State of Maryland, by some person yet unnamed.

4. That the specifics of the complaint were that of "child left unattended" on August 7, 1985 and the complaint had to do particularly with Paul and Michael Freed, being left with stepbrother Brian for 3 hours.

5. That the complaint was received by Defendant Tom Weimer, Assistant Director of the Agency who shortly thereafter dispatched Nancy Lynch, a social worker for said agency to investigate the alleged "neglect" on the part of the Freeds.

6. That Defendant Lynch visited the home of the Plaintiffs and found at home, Paula Freed along with her daughter Elizabeth.

7. That the Defendant without proper identification or otherwise, demanded to speak to the children and indicated that Mrs. Freed had been charged with child neglect by an as yet unnamed complainant.

8. The facts of the case as presented and as uncontradicted in the agency file were that the three children, Brian, Paul and Mike are for the summer every day (7:00 A.M. - 1:00 P.M.) in the care of T. Paul Fairbank, the childrens' grandfather who resides at 74th Street in Ocean City, Maryland while Mr. and Mrs. Freed attend to their business as owners/operators of the Ocean City Mister Donut franchise.

9. As best described by Mr. Fairbank, in his affidavit filed with the agency:

"The circumstances surrounding my part in the incident of August 7, 1985 is as follows:

Around May 1, 1985, my dermotologist removed a small skin growth from my right thigh. He advised me by letter of May 6 that the biopsy did show skin cancer. I did not see this letter until July 23. On Wednesday, July 24, Dr. Mirkin of Silver Spring, Maryland, excised this tumor. He indicated I was to return in two weeks for removal of stitches, etc. Early on August 7, approximately 8:00 A.M. I informed my daughter that I was worried about the operation and that I wanted to leave immediately so I could see Dr. Mirkin and get the results of the biopsy.

The three younger children were left in the safety of their home unattended, except for telephone conversations, for a couple of hours. Brian, the almost eleven year old boy is very capable, resoonsible, and unusually intelligent person. He cares deeply for his two younger brothers. Frequently, he helps me in my care of the children; he dresses them, bathes them, plays with them. I trust him completely. He is a good baby-sitter.

10. That the Agency eventually closed out its investigation by "ruling out" any child neglect.

11. During the course of the investigation, the Plaintiffs suffered embarrassment and humiliation, as the subjects of a formal investigation of child neglect, and were subjected to numerous inquiries by the Agency and its employees.

12. The Plaintiffs were most concerned and shocked to learn that although they provide an excellent home environment for their children, most of which attend the Worcester Country School in Berlin, maryland, and although they provide for their care by the grandfather dur-

ing those days or times in the summer when they must be away from the home working to support the family, that such an investigation and inquiry could be initiated based on the one day that the childrens' grandfather had to go to the doctor.

13. The children were made upset and the whole family was in a turmoil concerning the investigation, the means of the investigation, and the basis for initiating such an investigation.

14. That the Plaintiffs were required to seek legal assistance to represent them before the Agency, to investigate the circumstances and nature of the complaint, to advise them as to whether or not they had to subject their minor children to "interviews" with social services personnel as demanded.

15. That based upon all the circumstances and facts surrounding the incident, the Plaintiffs believe and therefore aver that the

complaint was made to the Agency by Mrs. Freed's former spouse.

16. That regardless of who made the complaint, however, the Plaintiffs intend to file an action against said individual for malicious prosecution, abuse of process, and other common law actions, in that the complaint was made in bad faith and that the subject children involved were not neglected as defined by Family Law Article §5-701:

"Neglected child means a minor child Who has suffered or is suffering significant physical or mental harm or injury..."

17. That in a personal meeting with Defendants Weimer and Lynch, on August 16, 1985, Counsel for the Plaintiffs specifically requested the name of the complainant which was refused.

18. That by letter of September 3, 1985, issued to the Worcester County Department of Social Services, the Plaintiffs' attorney again requested the disclosure of the com-

plainant which was refused by letter of September 6, 1985 signed by Defendants Lynch, Weimer, and Yates.

19. That a Maryland statute, Family Law Article §5-708 provides:

"Any person..who in good faith makes...a report of neglect..is immune from any civil liability." (emphasis added)

20. That therefore, any person who does not act in good gaith is not immune from civil liability.

21. The issue of whether the defense of immunity applies can only be determined by a fact finder in the appropriate civil proceeding.

22. The Plaintiffs are entitled to the name of the complainant in order that may seek the redress that they are entitled to.

23. The effect of failing to disclose the name of the complainant constitutes de facto immunity of all persons making such complaints without regard to their mo-

tives or whether they are acting maliciously toward the parents, which is contrary to the letter and spirit of the statute.

24. If the agency claims to have destroyed its file, then the Plaintiffs should be entitled to take the depositions of Defendants Lynch and Weimer under oath, since they have already been made aware throughout that the name of the complainant was thought to be Mrs. Freed's former spouse from Delaware.

25. The withholding of the name of the complainant has denied the Plaintiffs certain remedies, and if such non-disclosure was based on any statute or regulation, such statute or regulation is unconstitutional on its face, or alternatively as applied to the Plaintiffs who were fully exonerated by the Agency.

WHEREFORE, Plaintiffs request that the Court order the Defendants to supply them with the name and address of the complain-

and who initiated the false and spurious charges, and for such other and further relief as the nature of the case may require.

Affidavit Pursuant to BE40

I do solemly declare and affirm under the penalties of perjury the matters and facts contained hereinabove as true and correct to the best of my personal knowledge, information and belief

PAULA FREED

RICHARD B. FREED

Count II
(42 U.S.C. §1983)

Richard B. Freed and Paula Freed, Plaintiffs, by Walter P. Drake their attorney, sue Worcester County Department of Social Services, State of Maryland, Baine yates, Tom Weimer, and Nancy Lynch, Defendants, for that:

1. The Plaintiffs, Richard B. Freed and

Paula Freed, are husband and wife, and are citizens fo the United States of America, and residents of Ocean City, Maryland.

2. The Worcester County Department of Social Services is an agency of the State of Maryland and the Worcester County Department of Social Services in various capacities.

3. That the three older children, James, Elizabeth and Brian are the children of Plaintiff Paula Freed and James Gray by a former marriage.

4. That on or about August 9, 1985, a complaint of child neglect was made with the Worcester County Department of Social Services, an agency of the State of Maryland, by some person yet unnamed.

5. That the specifics of the complaint were that of "child elft unattended" on August 7, 1985 and the complaint had to do particularly with Paul and Michael Freed.

6. That the complaint was received by Defendant Tom Weimer, Assistant Director of the Agency who shortly thereafter dispatched Nancy Lynch, a social worker for said agency to investigate the alleged "neglect" on the part of the Freeds.

7. That Defendant Lynch visited the home of the Plaintiffs and found at home, Plaintiff Paula Freed along with the three children Brian 10, Paul 5, and Mike 3.

8. That the Defendant without proper identification or otherwise, demanded to speak to the children and indicated that Mrs. Freed had been charged with child neglect by an as yet unnamed complainant.

9. The facts of the case as presented and uncontradicted in the agency file were that the three children, Brian, Paul and Mike are for the summer every day (7:00 A.M. - 1:00 P.M.) in the care of T. Paul Fairbank, the children's

grandfather who resides at 74th Street in Ocean City, Maryland, while Mr. and Mrs. Freed attend to their business as owners/ operators of the Ocean City Mister Donut Franchise.

10. As best described by Mr. Fairbank, in his affidavit filed with the agency:

"The circumstances surrounding my part in the incident of August 7, 1985 as follows:

Around May 1, 1985, my dermatologist removed a small skin growth from my right thigh. He advised me by letter of May 6 that the biopsy did show skin cancer. I did not see this letter until July 23. On Wednesday, July 24, Dr. Mirkin of Silver Spring, Maryland, excised this tumor. He indicated I was to return in two weeks for removal of stitches, etc. Early on August 7, approximately 8:00 A.M., I informed my daughter that I was worried about the operation and that I wanted to leave immediately so I could see Dr. Mirkin and get the results of the biopsy.

The three younger children were left in the safety of their home unattended, except for telephone conversations, for a couple of hours. Brian, the almost eleven year old boy is a very capable, responsible, and unusually intelligent person. He cares deeply for his two younger brothers. Frequently,

he helps me in my care of the children; he dresses them, bathes them, plays with them. I trust him completely. He is a good baby-sitter."

11. That the Agency eventually closed out its investigation by "ruling out" any child neglect.

12. During the course of the investigation, the Plaintiffs suffered embarrassment and humiliation, as the subjects of a formal investigation of child neglect, and were subjected to numerous inquiries by the Agency and its employees.

13. The Plaintiffs were most concerned and shocked to learn that although they provide an excellent home environment for their children, most of which attend the Worcester Country School in Berlin, Maryland, and although they provide for their care by the grandfather during those days of times in the summer when they must be away from the home working to support the family, that

such an investigation and inquiry could be initiated based on the one day that the childrens' grandfather had to go to the doctor.

14. The children were made upset and the whole family was in a turmoil concerning the investigation, the means of the investigation, and the basis for initiating such an investigation.

15. That the initial complaint to the governmental agency, which set in motion a whole panoply of judicial and quasi-judicial procedures, was made in bad faith, without any justification, and constitutes a maliciousattack on the Plaintiffs and an attempt to smear their good name in the community.

16. That because the Agency eventually "ruled out" any neglect on the part of the Plaintiffs, the actions of the unknown, as yet unnamed, complainant may constitute an abuse of process, malicious prosecution, in-

vasion of privacy, and slander, among other things, for which the Plaintiffs are entitled to seek redress in the Court.

17. That the Plaintiffs attorney, Walter P. Drake, has twice demanded of the Agency, the name of the person making the complaint which initiated the needless waste of Agency time and resources, and which resulted in the harassment and humiliation of the Plaintiffs; once in a personal meeting with the Defendants Weimer and Lynch on August 16, 1985, and once by letter of September 3, 1985, which disclosure was refused by Defendants Lynch, Weimer and Yates.

18. That the refusal to disclose the name to the Plaintiffs, particualrly when the Agency specifically exonerated the Plaintiffs, effectively eliminates their right of access to the Courts and their right to bring an action against the unknown as yet unnamed complainant.

19. The Plaintiffs are entitled to the name of the complainant in order that they may seek redress that they are entitled to.

20. This action is brought pursuant to 42 U.S.C. §1983, in that at all times pertinent, the Defendants were acting under color of a law and/or regulation of the State of Maryland, namely Family Law Article, §5-707, and COMAR 07.02. 0706, et. seq.

21 That the Defendants have failed, by statutory provisions unconstitutional on their face or as applied, to provide any procedure by which the name of the complainant could be obtained so as to provide for civil remedy against malicious and abusive use of the procedures set up to protect children by individuals whose motive it is to attack,

embarrass, or subject to unfair scrutiny parents of young children.

22. That by reason of the aforementioned acts of the Defendants in refusing to disclose the name of the complainant, and in failing to provide any viable procedure by which such name could be obtained, the Plaintiffs have been jubjected to a deprivation of rights, privileges, and immunities secured to them by the Constitution of the United States, their rights to procedural and substantive due process guaranteed to them by the 14th Amendment, the right to a remedy for the enforcement of a legal right, and the right to privacy.

23. That as a direct and proximate result of the actions of the Defendants, the Plaintiffs have suffered mental and

emotional distress, aggravation, humiliation and embarrassment, and have been caused to expend sums for attorneys fees to protect and gain their individual rights.

WHEREFORE, Plaintiffs claim $25,000 compensatory damages, attorney fees pursuant to 42 U.S.C. §1988, and costs of suit; Plaintiffs also request that the Defendants be ordered to disclose all available information concerning the identity of the complainant; Plaintiffs also request that the Defendants be permanently enjoined from failing to disclose the names of complainants to the subjects of investigation where neglect is ruled out by the Agency.

WALTER P. DRAKE

No. 86-1985

Supreme Court, U.S.
FILED
JUL 8 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

RICHARD B. FREED, ET UX.,

Appellants,

v.

WORCESTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS OR AFFIRM

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QUESTION PRESENTED

The question presented by this motion to dismiss or affirm is whether parents seeking the identity of the reporter of a child neglect complaint against them are entitled to review in this Court under 28 U.S.C. §1257 of a state court judgment denying disclosure, where:

a) the parents failed in state court to draw in question the validity of Maryland statutes on the ground of their being repugnant to the Constitution; and

b) the parents fail to present a substantial federal question.

PARTIES TO PROCEEDING BELOW

The parties have remained the same since the filing of this action in the Circuit Court for Worcester County (Maryland). Plaintiffs/Appellants are Richard B. and Paula Freed. Defendants/Appellees are Worcester County Department of Social Services, the State of Maryland, Baine Yates, Tom Weimer and Nancy Lynch.

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No. 86-1985

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

RICHARD B. FREED, ET UX.,

Appellants,

v.

WORCESTER COUNTY DEPARTMENT OF SOCIAL SERVICES, ET AL.,

Appellees

ON APPEAL FROM THE
COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16.1, appellees Worcester County Department of Social Services (hereinafter "WCDSS"), et al, move to dismiss the appeal herein, or in the alternative, to affirm the

decision of the Court of Appeals of Maryland. The grounds for the motion are that appellants failed in state court to draw in question the validity of Maryland statutes on the ground of their being repugnant to the Constitution; and that appellants fail to present a substantial federal question. Therefore, appellants are not entitled to review by this court, either by appeal or by writ of certiorari under 28 U.S.C. §1257.

STATE STATUTES INVOLVED

This appeal raises the question of the constitutionality of Maryland statutes and regulations providing for the confidentiality of records of child abuse or neglect and their disclosure under certain circumstances, see Art. 88A §§6(b) and (d), Ann. Code of Md.; provisions granting good faith immunity to persons making reports of child neglect, see Md. Code Ann. Fam. Law Art. §§5-702(2), 5-708; and provisions restricting the disclosure of lay reporters to the reported family, see Md. Code Ann. Fam. Law Art., §5-707, and Code of Maryland Regulations (COMAR) .07.02.07.06E.

STATEMENT OF THE CASE

In August, 1983, WCDSS, a local department of social services, received a report of suspected child neglect involving children of Appellants Richard

and Paula Freed. After interviews with members of the Freed family, WCDSS ruled out child neglect. The Freeds demanded that Appellees disclose the name of the person making the neglect report. Appellees refused to identify the complainant.

The Freeds then filed a two count complaint against WCDSS, the State of Maryland and the three WCDSS employees who investigated the neglect report but did not disclose the name of the reporter. Appellants did not allege that any of the state officials acted in bad faith or contrary to existing law. Nevertheless, the Freeds sought a writ of mandamus to compel Appellees to disclose the complainant and damages and injunctive relief under the Civil Rights Act, 42 U.S.C. §1983, for alleged violations of rights under the Fourteenth Amendment to the United States Constitution. The

complaint did not seek declaratory or injunctive relief voiding the Maryland statutes and regulations limiting disclosure as being repugnant to the United States Constitution.

On March 5, 1986, Circuit Court for Worcester County, Maryland dismissed the Freeds' complaint. After noting an appeal to the Court of Special Appeals of Maryland, the Freeds filed a petition for writ of certiorari to the Court of Appeals of Maryland, which denied the writ on May 21, 1986. On December 8, 1986, the Court of Special Appeals issued a reported opinion affirming the dismissal of the Freeds' complaint. Freed v. Worcester County Department of Social Services, 69 Md. App. 447, 518 A.2d 159 (1986). On January 2, 1987, the Freeds filed a second petition for writ of certiorari with the Court of Appeals, which was denied on March 23, 1987.

ARGUMENT

I. Appellants Have No Right To Appeal Because They Have Not Drawn In Question The Validity Of Maryland Statutes In State Court Proceedings Below.

In its written opinion affirming the dismissal of the Freeds' action the Court of Special Appeals of Maryland summarized the relief sought in their complaint: a writ of mandamus to compel disclosure of the reporter of child neglect; money damages under 42 U.S.C. §1983; and an injunction under §1983 ordering disclosure of the source of the report in this case and in other cases where neglect is ruled out. Jurisdictional Statement(J.S.), at 9a-10a. Because Appellants failed to make a timely and explicit demand that Maryland statutes, as applied to them, should be voided, no right to appeal exists here. See Charleston Federal Savings & Loan Assn. v. Alderson, 324 U.S. 182, 185 (1945). 1/

In both the trial court and the Court of Special Appeals, appellants argued that they were entitled to disclosure of the identity of the complainant under Maryland law and the United States Constitution. Instead of explicitly challenging Maryland statutes, appellants claimed rights under the Fourteenth Amendment which purportedly limit the discretion of state employees to deny disclosure. See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 562 n. 4 (1979), citing cf. Phillips v. United States, 312 U.S. 246, 252 (1941) ("[A]n attack on lawless authority in a particular case is not an attack on the constitutionality of the statute

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1/ Appellants claim a right of review in this Court either by appeal or by certiorari. Appellants are entitled to have their Jurisdictional Statement considered as a petition for writ of certiorari if no appeal lies. This argument shows why appellants have no right to appeal; Argument II demonstrates why the Court should dismiss the petition for writ of certiorari, or in the alternative, affirm the judgment of the Court of Appeals of Maryland.

conferring the authority . . .") Given the nature of appellants' claims for relief, this Court lacks appellate jurisdiction.

For an appeal to lie under 28 U.S.C. §1257(2), a state court must sustain a statute and hold it applicable to a particular set of facts as against the contention that such application is invalid on federal grounds. Japan Line v. County of Los Angeles, 441 U.S. 434, 440-1 (1979). But where, as here, the objection in the state court was not "that the statute was invalid as applied, but rather that the effect of the state court's exercise jurisdiction in the circumstances" deprived the litigant of constitutional rights, no right to appeal exists. Hansen v. Denckla, 357 U.S. 235, 244 (1958).

In their Jurisdictional Statement appellants seek, for the first time, a

declaration that numerous state statutes and regulations are unconstitutional. J.S. at 16-17. See State Statutes Involved, supra. Because appellants did not challenge these provisions in state court, they may not do so on appeal. Cardinale v. Louisiana, 394 U.S. 437, 439 (1969).

Appellants have failed to make an explicit and timely attack on the statutes they now challenge and, therefore, have no right to appeal to this Court.

II. This Court Should Dismiss The Petition For Writ Of Certiorai, Or In The Alternative, Affirm The Judgment Below Because Appellants Fail To Present A Substantial Federal Question.

Assuming that the Court decides to treat the Jurisdictional Statement as a petition for writ of certiorari, no compelling reason exists why this Court should grant such a petition under 28 U.S.C. §1257(3). Appellants fail to cite a single authority under the Civil Rights

Act granting disclosure of a child neglect reporter, allowing a damage claim or declaring state statutes unconstitutional. No such authorities exist; and no substantial federal question is presented by the facts of this case. The decision of the Maryland courts is so obviously correct that further review is unwarranted.

Without citing a single authority, the Freeds claim that refusal of the disclosure sought in this lawsuit denied them their right to sue the informant and, consequently, various constitutional rights. See J.S. at 21-30. At the same time, the complaint alleges that the neglect report was made by Mrs. Freed's former spouse. J.S. at 42a-43a. The Court of Special Appeals held that the legal action by the Freeds is not impossible. Therefore, there is no actual encroachment of their right of access to

the courts. J.S. at 16a-17a. The Freeds need no relief from this or any other court in order to file an immediate action against the individual allegedly making the bad faith report against them.

No timely or significant issues are presented by this petition. Contrary to Appellants' suggestion, this is not a case where social workers interviewed ". . . friends, relatives, and neighbors, as well as school teachers, day care personnel, doctors, clergymen and others who know the family." J.S. at 16, quoting Besharov, D.J., "Unfounded Allegations - A New Child Abuse Problem," The Public Interest, No. 83, Spring 1986, pp 18-33. The complaint simply alleges that WCDSS employees demanded to speak to the Freed children J.S. at 39a. No allegations were made that persons outside the family were contacted. If embarrassment and damage to a family's reputation from an

investigation of unfounded child neglect is the important societal issue Appellants seek to present to this Court, no facts in the complaint have raised this issue. 2/

Appellants fail to show why they are entitled to maintain this action under 42 U.S.C. §1983. Neither Maryland law nor the Civil Rights Act entitles them to the disclosure they seek here. Rejecting the Freeds' state law count for mandamus, the Court of Special Appeals of Maryland determined that ". . . there is neither 'imperative' duty on the part of social services (to disclose the complainant) nor the 'clear legal right' in the Freeds." 3/

2/ Nor is this a case which should be reversed because the judgment below will have an impact on the validity of similar statutes in other states. Appellants make no such claim.

3/ The Court of Special Appeals' affirmance of the dismissal of the mandamus count is fully supported by adequate and independent state grounds. See Michigan v. Long, 463 U.S. 1032, 1038 (1983). No federal questions were raised by Appellants in this claim. Therefore, on this basis alone, Appellants are not entitled to review of their mandamus claim.

J.S. at 11a. Moreover, the court below found that the purpose behind the nondisclosure law is to encourage the reporting of child neglect cases. J.S. at 14a.

Just last term, this Court recognized the importance of state confidentiality statutes in furthering this goal in Pennsylvania v. Ritchie, ____ U.S. ____, 107 S.Ct. 989, 1003-4 (1987):

> Relatives and neghbors who suspect abuse . . . will be more willing to come forward if they know that their identities will be protected. Recognizing this, the Commonwealth-like all other states-has made a commendable effort to assure victims and witnesses that they may speak to C(hildren) Y(outh) S(ervices) counselors without fear of general disclosure. The Commonwealth's purpose would be frustrated if this confidential material had to be disclosed upon demand to a defendant charged with criminal child abuse, simply because a trial court may not recognize exculpatory evidence.

This Court's refusal to divulge the contents of a protective services record to a criminal defendant applies with greater force to Appellants, who have a far less compelling need for the

confidential information. Appellants present no novel legal or factual isues justifying this Court's reconsideration of the confidentiality of these records.

CONCLUSION

For the reasons stated, the Freeds are not entitled to review in this Court, either by appeal under 28 U.S.C. §1257(2), or by petition for writ certiorari under 28 U.S.C. §1257(3). Therefore, appellees respectfully move the Court to dismiss this appeal, or in the alternative, to affirm the judgment of the Court of Appeals of Maryland.

Respectfully Submitted,

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